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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,682	05/18/2001	Mark Ashby	032005-097	3365

7590

02/12/2004

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EXAMINER

IZAGUIRRE, ISMAEL

ART UNIT PAPER NUMBER

3765

21

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,682

Applicant(s)

ASHBY ET AL.

Examiner

Ismael Izaguirre

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-77 is/are allowed.
- 6) ☒ Claim(s) 78-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

CLAIMS

Summary

Claims 45,65 and 78 are the independent claims under consideration in this Office action.

Claims 46-64,66-77 and 79-82 are the dependent claims under consideration in this Office action.

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 78-82 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kensey et al. (5,676,689).

Kensey et al., applied in the previous Office action, remain applicable. Kensey et al. teach a fluid handling tube. In fact Kensey et al. teach two fluid handling tubes. The first tube is a positioning device 400 (figure 28, for example) which is considered a “fluid handling tube” where it includes a tube structure with a lumen 402, a proximal enlarged portion (at the end including character number 406) and a distal area or tip (at the end including character number 404). This tube structure includes a fluid port 404 near the distal end and a fluid port 406 at the proximal end. As such, it anticipates the

above noted claims. Kensey et al. further includes a second tube 28. It is considered a "fluid handling tube" since it includes tube structure. Specifically, a lumen (which allows the positioning device 400 to slip therethrough), and a distal port (at 28c), and a proximal port with an enlarged portion (at 28E, 28D). The tube 28 of Kensey et al. include a distal port near the end 506 (figure 33) and a proximal port at 28E for the movement of fluids within the tube. As such, it anticipates the above noted claims.

The following new document is introduced for Applicant's consideration in view of the broadness of the noted claims.

Claims 78-81 are rejected under 35 U.S.C. § 102(b) as being anticipated by Barnwell (5,462,194).

Barnwell teaches a fluid handling tube. Barnwell teaches a tube portion 9 having a proximal end 23 with an enlarged portion (figure 4, for example) and a distal end with a fluid port near such end. A lumen 21 is provided along the tube 9 for accommodating a control head 13. The control head controls the stopping and starting of the flow of fluid from the reservoir to the control head, and then to the fluid handling tube.

ALLOWABLE SUBJECT MATTER

Claims 45-77 are allowable over the prior art of record.

PERTINENT CITATIONS

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lo illustrates a fluid handling tube including a distal end and a proximal end with an enlarged portion near the distal end.

INQUIRIES

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 308-0861.

Any inquiry concerning this communication or earlier communications directed to the examiner should be directed to Mr. Ismael Izaguirre at (703) 308-0892 located in CP2-4B18, Monday through Friday 9:30am to 6:00pm.

A handwritten signature in black ink, appearing to read 'Ismael Izaguirre', with a stylized flourish extending to the right.

Ismael Izaguirre
Primary Examiner
Group Art Unit 3765